No. 92-1827

*in the*

*SUPREME COURT*

*of the*

*UNITED STATES*

OCTOBER TERM OF 1992

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FRANK J. BONA, SR.

Petitioner,

vs.

MANUEL CHAVEZ, SR. and
GERALDINE VIGIL CHAVEZ,

Respondents.

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ON WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT

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# REPLY BRIEF OF PETITIONER

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# TABLE OF CONTENTS


| | PAGE |
|---|---|
| STATEMENT OF CASE ..... | 1 |
| ARGUMENT ..... | 2 |
| REQUEST FOR ATTORNEY'S FEES ..... | 4 |
| CONCLUSION ..... | 4 |


## TABLE OF CITATIONS

Case Cited:


| | |
|---|---|
| *Murphy v. Helena Rubinstein Co.*, 234 F. Supp. 893 ..... | 3 |
| *Gregory v. Connor* 591 So.2d 974 ..... | 4 |


Rule Cited:


| | |
|---|---|
| *Supreme Court Rule 24.2* ..... | 1 |
| *West's F.S.A. RCP Rule 1.540* ..... | 4 |

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## STATEMENT OF CASE

Petitioner adopts the provisions of *Supreme Court Rule 24.2* to set forth its objections to Respondents' Statement of the Case and to correct any inaccuracies contained therein.

Petitioner realleges and adopts by reference the facts of the case as fully set forth in its Statement of the Case contained in the Petition FOR A WRIT OF CERTIORARI.

Respondent objected to Petitioner's Statement that the Contract made Time of the Essence. The Contract speaks for itself and paragraph "I" specifically states Time is of the Essence. That language is clear and unambiguous with no interpretation or explanation necessary.

The two typed papers entitled "Agreement between Geraldine Vigil Chavez and Manuel Chavez and Frank J. Bona, Sr" and the printed Contract For Sale and Purchase which were executed by the said parties at the same sitting and time constituted one and the entire agreement of the parties. Paragraph #6 lines 5 and 6 of the former also provides that "Time is of the essence of this agreement and the contract for Sale and Purchase."

In order to ensure the correct presentation of each Lower Court's determination, Petitioner included in its Petition a concise list of the Opinions Below and a copy of each Order in the Appendix. Thus there should be no confusion regarding each ruling. Each Order speaks for itself without need of explanation by either Petitioner or Respondent.

## ARGUMENT

### I.

### RESPONDENTS SHOULD NOT BE ALLOWED TO ARGUE PETITIONER IS NOT ENTITLED TO ASSERT A DUE PROCESS VIOLATION WHEN RESPONDENTS CAUSED THE VIOLATION.

Respondents argue that Petitioner has not preserved its right to allege a Due Process

violation. Respondents are aware, however, that in the Lower Courts petitioner has consistently argued that the failure of the Respondents to file the deposition of the Petitioner after informing the Court and Petitioner that it was doing so prevented Petitioner from receiving fair and equal consideration of its claims. Respondents initially were under no obligation to file the deposition. Once, however, they made the representation to the Court and Petitioner in their Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment that they were simultaneously with the filing of that document filing the Deposition, they assumed that responsibility. Since there was no trial, Respondents had full knowledge that only through the deposition would the testimony of Petitioner be available to the Court. Respondents willingly assumed a weighty responsibility when they made that representation to the Court. Respondents indeed filed their depositions neglecting only to file that of Petitioner. Petitioner will refrain from speculating why Respondents chose this course of action. The result, however, is without speculation.

The Trial Court had the depositions of the Respondents before it for four months prior to rendering its Summary Judgment. The misrepresentation of the Respondents denied Petitioner a fair hearing and was a flagrant violation of due process. Petitioner brought this abuse to the attention of the District Court of Appeal of Florida, Third District. Logically, Petitioner could only notify the Court of the violation after he became aware of it. Since Petitioner justifiably relied on the representations of Respondents made to the Trial Court regarding the filing of his deposition, he was unaware of the due process violation until after that Court had rendered its judgement. Respondents' argument that Petitioner failed to preserve its claim must fail if the term due process has any meaning. The demands of due

process required by the Fourteenth Amendment are such as accord with Traditional concepts of fair play substantial justice, and a resolution of controversy upon the merits. *Murphy v. Helena Rubinstein Co., 234 F.Supp. 893.*

Certainly there was no fair play, substantial justice or a resolution of the controversy upon the merits where counsel for the Respondents made the above cited representations which were not correct and true and in a situation where some new ground arose after judgment, during or after appeal or something was newly discovered that could have been presented during the trial, but was not, relief from judgment should be used to reverse judgment previously affirmed by the District Court of Appeal. *West's F.S.A. RCP Rule 1.540 -- Gregory v. Connor, 591 So.2d 974.*

## REQUEST FOR ATTORNEY'S FEES

The Petitioner requests attorney's fees and costs be awarded him pursuant to the Contract and the Federal Statutes/rules.

## CONCLUSION

For the reasons stated herein and in the Petition for a Writ of Certiorari, a Writ of Certiorari should issue to review the Judgment of the Supreme Court of Florida.

Respectfully Submitted,

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